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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,319	07/10/2003	Kevin P. Klubek	S5143RLO	2823

7590

09/29/2004

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EXAMINER
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GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/617,319

Applicant(s)

KLUBEK ET AL.

Examiner

Dawn Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-10 and 18-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 18-25, 33 and 41 is/are rejected.
- 7) ☐ Claim(s) 3-10 26-32, 34-40 and 42-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office action is in response to the amendment dated July 19, 2004. Claims 1 and 11-17 are canceled. Claim 2 has been amended.
2. The drawings submitted July 19, 2004 are acknowledged and are approved.
3. The rejection of claims 1 and 11-14 under 35 USC 102(b) as being anticipated by Takahashi et al. (JP 2000-260565) is withdrawn due to the cancellation of these claims.
4. The rejection of claims 1, 2, 12-16 and 18-23 under 35 USC 102(b) as being anticipated by Ueno et al. (JP 2000-021574) is withdrawn due to the cancellation of claims 1 and 12-16 and due to the added limitation in claim 2 requiring at least one of R<sub>1</sub>-R<sub>8</sub> be something other than hydrogen.
5. The rejection of claims 17 and 24 under 35 USC 103(a) as being unpatentable over Ueno et al. (JP 2000-021574) in view of Iechi et al. (US 2004/0004215) is withdrawn due to the cancellation of claim 17 and the amendment of claim 2 upon which claim 24 depends requiring that at least one of R<sub>1</sub>-R<sub>8</sub> be something other than hydrogen.
6. Claims 3-10 remain objected to as being dependent upon a rejected base claim for the reasons set forth in the last Office action (mailed May 4, 2004), paragraph 6.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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8. Claims 2, 19, and 20-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Wang et al., Chemical Materials, (2003), Vol. 15, pages 1913-1917. Wang et al. discloses an OLED with a luminescent layer comprising a dihydrophenazine compound according to formula I (see Figure 1, page 1914; see also Figure 6 heading and col. 1 on page 1916). It is noted that claim 2 does not specifically require that the layer comprising the dihydrophenazine compound has to be a layer other than one of the layers already recited.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onikubo et al. (JP 10-251633). Onikubo et al. teaches electroluminescent materials for an electroluminescent device. General formula (I) (see par. 7) wherein A is A-46 (see par. 25) reads upon the instant dihydrophenazine compound. Onikubo et al. further teaches the device comprises an anode and a cathode (see par. 74). Onikubo et al. teaches the inventive compound is in the luminous layer. One embodiment of the device contains the following layers anode/luminous layer/electron injecting layer/cathode per instant claim 18 (see par. 74). Another embodiment of the device contains the following layers anode/hole injecting layer/luminous layer/cathode per instant claims 19 and 21. Since the dihydrophenazine is contained in the light emitting layer (luminous layer), the compound is not considered to be in a layer that is not adjacent to the light emitting layer per instant claim 20. Onikubo et al. teaches hole injecting

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materials for the hole injecting layer between the anode and the luminous layer per instant claims 22-24 (see par. 79 and 97). Although Onikubo et al. do not show compound (I) wherein A is A-46 in an example, it would have been obvious to one of ordinary skill in the art at the time of the invention to have selected the compound containing A-46 as the luminescent material for the device, because Onikubo et al. clearly teaches the compound as a luminescent material.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eguchi et al. (JP 61-043689). Eguchi et al. teaches a multilayered EL device (see abstract). Compound E shown in col. 2 of page 7 used in the device reads upon the instant dihydrophenazine compound.

Although Eguchi et al. does not appear to show an example using Compound E, it would have been obvious to one of ordinary skill in the art to have selected the compound for use in an electroluminescent device, since the compound is taught by Eguchi et al. for a device.

### ***Double Patenting***

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 2-10, 25, 33, and 41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-8, 24, and 39-50 of copending Application No. 10/390,973. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because the conflicting claims are drawn to an organic electroluminescent device comprising dihydrophenazine compounds in a layer of the device which is claimed in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

14. Claims 26-32, 34-40, and 42-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to teach the compounds of claims 25, 35, and 41 upon which these claims depend respectively.

***Response to Arguments***

15. Applicant's arguments with respect to claims 2-10 and 18-48 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is 571-272-1523. The examiner can normally be reached Monday through Friday during normal business hours. Please allow the examiner twenty-four hours to return your call.

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If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Dawn Garrett**  
**Primary Examiner**  
**Art Unit 1774**

D.G.  
September 22, 2004